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7 Attorneys for Defendants
LITTON LOAN SERVICING LP
8 (incorrectly sued herein as Litton Loan
Service, LLC) and WELLS FARGO BANK,
9 N.A. (incorrectly sued herein as Wells Fargo
Bank)

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
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14 STELLA ONYEUKWU, an individual,

Case No.: CV 09 2428-SBA

15 Plaintiff,

16 vs.

17 FREMONT INVESTMENT & LOAN;
FREMONT HOME LOAN TRUST 2006-B;
18 FREMONT MORTGAGE SECURITIES
CORPORATION; WELLS FARGO BANK;
19 LITTON LOAN SERVICE, LLC; and DOES 1
through 100, Inclusive,

**NOTICE OF MOTION AND MOTION
FOR REMAND TO SUPERIOR COURT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

20 Defendants.

Date: August 11, 2009
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Saundra Brown Armstrong

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23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on August 11, 2009, at 1:00 p.m., or as soon thereafter as the
25 matter may be heard, in Courtroom 3 of the above-entitled Court, located at 1301 Clay Street,
26 Oakland, California, the Honorable Saundra Brown Armstrong, presiding, defendants Litton Loan
27 Servicing LP and Wells Fargo Bank, N.A. (collectively "Defendants") will and hereby do move for
28 an order remanding this matter to the Contra Costa County Superior Court.

1 This motion is made pursuant to 28 U.S.C. § 1447(c) on the grounds that the Court does not
2 have subject matter jurisdiction over the claims in this matter because complete diversity of the
3 parties did not exist at the time of removal. 28 U.S.C. § 1447(b). This motion is based on this
4 notice of motion and motion, the accompanying memorandum of points and authorities, the
5 declaration of Harold R. Jones, the pleadings and records on file in this action, and upon such other
6 oral and documentary evidence that may be presented at the hearing on this motion.

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8 DATED: July 1, 2009

SEVERSON & WERSON
A Professional Corporation

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10 By: _____ /s/ *Harold R. Jones*
11 Harold R. Jones

12 Attorneys for Defendants
13 LITTON LOAN SERVICING LP (incorrectly
14 I hereby attest that I have on file
15 sued herein as Litton Loan Service, LLC) and
16 all holograph signatures for any
17 "conformed" signature (/s/) within
18 signatures indicated by a
19 this e-filed document
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WELLS FARGO BANK, N.A. (incorrectly sued
herein as Wells Fargo Bank)

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants Litton Loan Servicing LP and Wells Fargo Bank, N.A. (collectively “Defendants”), the parties that previously removed this matter from the Contra Costa County Superior Court, respectfully request that the Court issue an Order remanding this matter to the Contra Costa County Superior Court. As explained below, it appears Defendants’ removal was improvident and that the Court does not have subject matter jurisdiction over the Plaintiff’s claims.

Defendants’ counsel has discussed this matter with Plaintiff, who appears in pro per. Plaintiff, however, has refused to execute a stipulation requesting that the Court remand this matter. Defendants therefore make this request by noticed motion.

A. Procedural Background

On February 13, 2009, plaintiff Stella Onyeukwu (“Plaintiff”), appearing in pro per, filed a Complaint in the Superior Court of the State of California, in and for the County of Contra Costa, Case No. MSC09-00349, entitled *Stella Onyeukwu, an individual v. Fremont Investment & Loan; Fremont Home Loan Trust 2006-B; Fremont Mortgage Securities Corporation; Wells Fargo Bank; Litton Loan Service, LLC and Does 1 through 100, inclusive* (the “State Court Action”). Declaration of Harold R. Jones (“Jones Decl.”), ¶ 2.

On June 1, 2009, Defendants removed the State Court Action from the Superior Court of the State of California, in and for the County of Contra Costa, to this Court. Jones Decl., ¶ 3.

Shortly thereafter, Defendants discovered Plaintiff had served Fremont Investment and Loan (now known as Fremont Reorganizing Corporation) (“Fremont”) with a Summons and Complaint in the State Court action prior to June 1, 2009. Jones Decl., ¶ 3. Defendants also discovered that Fremont is a California Corporation. Jones Decl., ¶ 3. Accordingly it appears there was no diversity of citizenship between Plaintiff and Fremont at the time of removal.

B. The Court Should Remand This Matter to State Court.

Federal courts remand removed actions if at any before final judgment the Court determines it lacks subject matter jurisdiction. *International Primate Protection League v. Administrators of Tulane Educational*, 500 U.S. 72, 87 (1991) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction over a case removed from state court, the case

1 shall be remanded.”) Federal diversity jurisdiction requires that all parties to the action be “citizens
 2 of different states” or “citizens or subjects of a foreign state” 28 U.S.C. § 1332a. In addition,
 3 28 U.S.C. section 1441(b) imposes a further limitation upon removals under the Court’s diversity
 4 jurisdiction. Under 28 U.S.C. section 1441(b) “...such action [s] shall be removable only if none
 5 of the parties in interest properly joined and served as defendants is a citizen of the State in which
 6 such action is brought.” *Spencer v. U.S. Dist. Court for Northern Dist. of Ca.*, 393 F.3d 867, 870
 7 (9th Cir. 2004).

8 Plaintiff alleges she resides in the state of California. After removal, Defendants
 9 discovered defendant Fremont is a California Corporation, and thus is also citizen of the State of
 10 California. Jones Decl., ¶ 3. Because Plaintiff and defendant Fremont are each citizens of the state
 11 of California, it appears this Court did not have original jurisdiction over this civil action at the
 12 time of removal. The Court should therefore remand this matter to the Superior Court.

13 **CONCLUSION**

14 For the foregoing reasons, Defendants respectfully request that the Court remand this
 15 matter to the Contra Costa County Superior Court.

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17 DATED: July 1, 2009

SEVERSON & WERSON
 A Professional Corporation

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By: _____ /s/ *Harold R. Jones*
 Harold R. Jones

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Attorneys for Defendants
 LITTON LOAN SERVICING LP (incorrectly
 sued herein as Litton Loan Service, LLC) and
 WELLS FARGO BANK, N.A. (incorrectly sued
 herein as Wells Fargo Bank)

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